

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

SOUTHEASTERN BOLL WEEVIL )  
ERADICATION FOUNDATION, INC., )

Plaintiff, )

v. )

BOLL WEEVIL ERADICATION )  
FOUNDATION OF GEORGIA, INC., )  
and TOMMY IRVIN in his capacity as )  
TRUSTEE of the BOLL WEEVIL )  
ERADICATION FOUNDATION OF )  
GEORGIA, INC., )

Defendants. )

Civil Action No.  
2:06-cv-00756-MHT-VPM

**DEFENDANT TOMMY IRVIN, COMMISSIONER,  
GEORGIA DEPARTMENT OF AGRICULTURE’S  
PRE-ANSWER MOTION TO DISMISS**

**COMES NOW**, Defendant Tommy Irvin, Commissioner, Georgia Department of Agriculture, (designated in the caption of this matter as “Tommy Irvin in his capacity as trustee for the Boll Weevil Eradication Foundation of Georgia, Inc.”) by and through counsel, the Attorney General for the State of Georgia, and specially appears (without submitting himself to the jurisdiction of

the Court or waiving proper service of process or the appropriate statute of limitations or any other defense otherwise available to him), to submit this Pre-Answer Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(1)(2), (3), and (6), and 17(b) on the basis of (1) plaintiff's lack of standing, (2) lack of personal jurisdiction, (3) Eleventh Amendment Immunity, and (4) failure to state a claim. In support of his Motion, Commissioner Irvin relies on his supporting brief filed contemporaneously with this motion.

Respectfully submitted this 4th day of December, 2006<sup>1</sup>.

THURBERT E. BAKER                      033887  
Attorney General

ISAAC BYRD                                101150  
Deputy Attorney General

          /s/ John E. Hennelly            
JOHN E. HENNELLY                      347075  
Senior Assistant Attorney General

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<sup>1</sup> The timeframe for the filing of a responsive pleading by Defendant Irvin was extended an additional three weeks from the initial due date of November 14, 2006, by agreement of the parties.

Please Address All  
Communications To:

JOHN E. HENNELLY  
Senior Assistant Attorney General  
Georgia Department of Law  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334-1300  
Telephone: (404) 656-7540  
Facsimile: (404) 651-6341  
E-mail: [jhennelly@law.ga.gov](mailto:jhennelly@law.ga.gov)

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have this day served the within and foregoing  
**DEFENDANT TOMMY IRVIN, COMMISSIONER, GEORGIA**  
**DEPARTMENT OF AGRICULTURE'S PRE-ANSWER MOTION TO**  
**DISMISS**, prior to filing the same using the CM/ECF system, by depositing  
a copy thereof, postage prepaid, in the United States Mail, properly  
addressed upon:

Duke R. Groover, Esq.  
William H. Noland, Esq.  
Groover & Childs  
Post Office Box 898  
Macon, Georgia 31202

D. Mitchell Henry, Esq.  
T. Randall Lyons, Esq.  
Webster, Henry, Lyons & White PC  
Post Office Box 239  
Montgomery, Alabama 36101-0239

Jerry A. Buchanan, Esq.  
Benjamin A. Land, Esq.  
Buchanan & Land, LLP  
P. O. Box 2848  
Columbus, Georgia 31902

Simeon F. Penton, Esq.  
Kaufman & Rothfeder, P.C.  
P. O. Drawer 4540  
Montgomery, Alabama 36102

This 4th day of December, 2006.

/s/ John E. Hennelly  
JOHN E. HENNELLY  
Senior Assistant Attorney General